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C O N F I D E N T I A L SECTION 01 OF 03 AMMAN 000580

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TAGS: [PGOV](#) [KDEM](#) [JO](#)  
SUBJECT: DOES JORDAN NEED A CONSTITUTIONAL COURT?

REF: A. AMMAN 157  
[1](#)B. 05 AMMAN 7979  
[1](#)C. 07 AMMAN 5061

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Classified By: Ambassador David Hale  
for reasons 1.4 (b) and (d).

[1](#)1. (C) Summary: In the wake of the government's withdrawal of a recent controversial draft law regulating civil society (Ref A), there is renewed talk in Jordan about the necessity of founding a Constitutional Court. Long a part of internal reform discussions, the idea has historically been pushed into the background by the Ministry of Justice and successive governments. On the surface, opponents of a Constitutional Court say that Jordan's judiciary already has the effective power to annul laws, even if the power is never utilized. For some, however, the lack of a Constitutional Court is more about protecting the status quo and the policy prerogatives of the King and government. End Summary.

Pseudo-Constitutional Courts  
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[1](#)2. (SBU) Jordan's constitution is silent on the ability of the courts to strike down laws. Still, there are several articles in Jordan's founding document which come close to establishing a constitutional court. A group of articles outline the "High Tribunal" - a body composed of three senators and five judges. The High Tribunal, normally used as an impeachment court for ministers (Article 57), can also be used to "interpret" laws and the constitution itself (Articles 122, 123). There is a limit on the High Tribunal's ability to act, however. It can only interpret laws which have not yet appeared before another court. It also needs a referral from the Prime Minister to start its deliberations - the High Tribunal cannot initiate investigations of new laws on its own. Note and comment: In an unusual political maneuver, the Parliament's Legal Committee recently referred a draft law (the Ombudsman law - Ref A) to the High Tribunal for comment even before it was ratified. However, this does not seem to presage expanded use of this mechanism, as contacts in parliament tell us that use of the High Tribunal in this case was simply as a convenient and neutral arbiter between two schools of thought on the committee considering the law, rather than any broader constitutional review mechanism. End note and comment.

[1](#)3. (SBU) Article 94 of Jordan's constitution allows governments to enact provisional laws when parliament has been dissolved (provisional laws will be discussed septel). These provisional laws are specifically ordered to be "not contrary to the provisions of the Constitution" - a clause which has been traditionally interpreted by Jordan's courts as an open door to strike down provisional laws when they are unconstitutional. While this power has not been used very

often, it is the closest Jordan's courts have come to filling the role of a constitutional court in practice.

#### Strict Constructionists

¶4. (C) Aside from one case involving a provisional law (see below), Jordanian courts (including the High Tribunal) have never declared a law unconstitutional. There are different schools of thought on why this is the case. The official position of the Ministry of Justice is that courts are technically able to strike down laws, but simply choose not to. Mohammed Al-Ghazo, Secretary General of the Ministry of Justice and member of the Judicial Council, says that the lack of a single case challenging the constitutionality of laws merely displays the conservatism of the judiciary, not the lack of a legal mandate. As a recent Jordan Times editorial declared, "the existing court system has demonstrated, time and again, that it is reluctant, if not outright opposed, to render judgment on the constitutionality of laws."

¶5. (C) Others in Jordan's judicial establishment are certain that Jordan's courts are legally barred from annulling laws. Former Chief Justice of the High Court Faruq Kilani states it plainly: "Jordanian courts are not authorized to rule on the constitutionality of laws." According to Professor Mohammed Ghazwi, ex-dean of three Jordanian law schools and the leading scholar on Jordan's constitution, there is no Marbury vs. Madison-type decision in Jordan, in which the judicial branch claims the right to strike down unconstitutional laws on its own.

¶6. (C) In the absence of the ability or the willingness to declare laws invalid, Jordan's judiciary merely interprets the law in specific cases, not commenting on the validity of the law itself. Lawyers are allowed to challenge the

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constitutionality of laws only in terms of the case before the court. While judges frequently rule in specific instances that unconstitutional laws cannot be applied, those rulings are never used to strike down the law itself. The net effect of this situation is that flawed statutes stay on the books - statutes which then flood the judiciary with scores of individual cases based on the same set of unconstitutional legislation. The lack of a check from the judiciary is also an effective green light for parliament and the executive to pass flawed statutes, knowing that they will never be struck down.

#### Why Not?

¶7. (SBU) The idea of a constitutional court has been floating around Jordan for some time. In the early 1990s discussions surrounding the National Charter, a Constitutional Court was recommended, but never acted upon. It resurfaced in 2005 as part of the National Agenda process (Ref B). While it mentions a Constitutional Court as beneficial, the National Agenda does not explicitly urge its creation, saying only that an undefined future commission should "formulate a set of policy recommendations pertaining to a Constitutional Court".

¶8. (C) The talk generated by the National Agenda process faded away as governmental officials concluded that the time wasn't right for a systemic change which could potentially challenge a wide variety of legislation and administrative decisions, many of which are seen by the government as crucial to advancing development and maintaining societal peace in Jordan. More specifically, there is concern in Jordan's judicial and political establishment that laws which skew Jordan's political balance towards East Bankers could be threatened by an activist Constitutional Court. That court could easily strike down a series of laws (and royal decrees)

which appear to conflict with Jordan's founding document. As an example, constitutional scholar Mohammed Ghazwi points out that the system of set-aside seats in parliament for Christians, Chechens/Circassians, and Bedouin is in direct conflict with the constitution, which states that there shall be no discrimination between Jordanians "on the grounds of race, language, or religion."

¶9. (C) For this reason, the Ministry of Justice has traditionally stood against the foundation of a Constitutional Court, a stance which is usually framed in terms of "respecting the will of the executive". In a meeting with Poloff, senior judge Ali Masri argued that judicial declarations of unconstitutionality would set an unacceptable precedent in which even lower court judges would be able to annul the work of the legislative and executive branches. The Ministry of Justice's Al-Ghazo posits that the idea of a constitutional court is a "policy decision" that will require political will at the royal level.

¶10. (C) "Political authorities are scared to establish a Constitutional Court," says former Chief Justice Faruq Kilani. He should know: Kilani was removed from the High Court of Justice after a 2003 decision which declared a provisional press and publications law unconstitutional. In that case, according to Kilani, the Minister of Justice personally asked him to uphold the government's will. He refused, saying that the law was blatantly contrary to Jordan's founding document. As a result, the Minister of Justice recommended his removal and pushed it through the Judicial Council (of which, ironically, Kilani was the head). "Many Prime Ministers told me personally that they were afraid that a Constitutional Court would annul all of their laws," Kilani remembers.

#### Outside Perspectives

¶11. (C) Those outside of the Justice Ministry's orbit are split on the necessity of a Constitutional Court. Some see it as necessary for the sake of political reforms, while others consider it a second-tier issue. "A Constitutional Court is very necessary," says Kilani. "There is no way for Jordanian courts to say if laws are right or wrong." Still, he admits that the idea of a Constitutional Court is "still not mature," and would require further study before going forward. For its part, the Jordanian Bar Association (which is effectively controlled by the Islamic Action Front) has not issued a definitive policy statement on the idea of a Constitutional Court. It has conducted small-scale studies of the issue and scattered conference sessions, but has not gone beyond the phase of initial inquiry.

¶12. (C) Eva Abu Halaweh, a lawyer and human rights activist, says that while the establishment of a Constitutional Court

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in Jordan would theoretically be a boon for human rights, many in the NGO community oppose the idea for the time being.

There is concern that like other judicial bodies (most notably the Anti-Corruption Commission - Ref C), the Constitutional Court would be seen in the public eye as another tool of the government, with its independence compromised by back room political maneuvers.

#### Is Now the Time?

¶13. (C) With a new reformist cabinet in place, Jordan's government seems poised to consider previously taboo structural reforms. Justice Minister Ayman Odeh has already indicated to us his interest in engaging with parliament on reforms that would relieve Jordan's overburdened judicial system. In recent years, Post has engaged successive governments on the need to strengthen judicial independence. The Ambassador encouraged previous Minister of Justice Sharif

Zu'bi to establish a Constitutional Court. As part of its judicial reform strategy, USAID has consistently approached the Jordanian government about the need for such a body, and sees the current reform process which will expand the number of judges in Jordan and house the courts in a special "judicial city" as an opportunity to incorporate the court into broader systemic changes. Up until this point, uneasiness about changes to the status quo have prevented movement on the Constitutional Court issue, despite our efforts. While it remains unlikely that this situation will change as long as the regime-level questions surrounding a Constitutional Court remain in place, the current cabinet may provide at least a renewed opening for discussion on this topic.

HALE